

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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TROY EMANUEL, JR.,

Case No. 3:20-CV-0566-RCJ-CLB

Plaintiff,

REPORT AND RECOMMENDATION OF U.S. MAGISTRATE JUDGE¹

[ECF No. 42]

C/O COLLINS, *et al.*,

Defendants.

10 This case involves a civil rights action filed by Plaintiff Troy Emanuel (“Emanuel”)
11 against Defendants Michael Abraham Collins (“Collins”), Michael Gamberg (“Gamberg”),
12 and David Santana (“Santana”) (collectively referred to as “Defendants”). Currently
13 pending before the Court is Emanuel’s “motion for a protective order”. (ECF No. 42.)² In
14 the motion, Emanuel seeks injunctive relief to prevent alleged further abuse from
15 correctional officers and an order for his transfer or release from prison. (*Id.*) Therefore,
16 the Court construes Emanuel’s motion as a motion for preliminary injunction. For the
17 reasons stated below, the Court recommends that Emanuel’s motion be denied.

18 | I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

19 Emanuel is an inmate in the custody of the Nevada Department of Corrections
20 ("NDOC") and is currently housed at Ely State Prison ("ESP") in Ely, Nevada. (ECF No.
21 1-1.) On October 1, 2020, Emanuel submitted his initial complaint and an application to
22 proceed *in forma pauperis*. (ECF Nos. 1, 1-1.)

23 Emanuel's complaint alleged that on March 29, 2020, Brown, Gamberg, and
24 Kircher came to Emanuel's cell and informed him that he was required to go to the

²⁸ ² Defendants opposed the motion, (ECF No. 44), and Emanuel replied. (ECF No. 46).

1 shower. (*Id.* at 6.) After Emanuel left his cell, he slipped in water. (*Id.*) When Emanuel
 2 slipped, Brown and Gamberg slammed Emanuel to the ground. (*Id.*) Gamberg began
 3 punching Emanuel in the ribs and yelled that he would kill Emanuel and break his ribs.
 4 (*Id.* at 6-7.) Gamberg started smashing Emanuel's face into the ground. (*Id.* at 7.) Collins
 5 started bending Emanuel's legs and ankles and said he would break them. (*Id.*) Santana
 6 slammed his knee into Emanuel's back. (*Id.*) Emanuel was told to get up, but he could
 7 not walk because of the injuries to his ribs. (*Id.*) Emanuel asserted that he needed medical
 8 attention after the alleged incident, but he was refused treatment. (*Id.*)

9 On April 29, 2021, the District Court screened the complaint pursuant to 28 U.S.C.
 10 § 1915A. (ECF No. 3.) The screening order allowed Emanuel to proceed on a single
 11 Eighth Amendment excessive force claim against Defendants Brown, Gamberg, Collins,
 12 and Santana. (*Id.* at 6.) The Court dismissed, without prejudice, Defendants Kircher and
 13 Gittere. (*Id.*)

14 **A. Emanuel's Motion for Protective Order**

15 On March 7, 2022, Emanuel filed the instant motion for protective order. (ECF No.
 16 42.) In the motion, Emanuel seeks injunctive relief to prevent alleged further abuse from
 17 correctional officers and an order for his transfer or release from prison. (*Id.*) In the motion,
 18 Emanuel asserts that before and after the March 29, 2020 incident that forms the basis
 19 of his claim in this case, he was either verbally or physically assaulted by correctional
 20 officers on various occasions. For example, he asserts that he was subject to excessive
 21 force by unnamed correctional officers on September 24, 2019, September 15, 2020, and
 22 January 4, 2021. (*Id.* at 1.) He also claims that on April 30, 2021 a female correctional
 23 officer named "Ms. Bodenheimer" used racial slurs against him. (*Id.* at 1-2.) Emanuel
 24 further claims Bodenheimer "let out" two Mexican/Caucasian inmates from their cell who
 25 proceeded to stab an African American inmate causing a fight to ensue. (*Id.* at 2.) Based
 26 on these incidents, Emanuel claims that "he feels unsafe" and requests a transfer to
 27 another facility. (*Id.*)

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1 Defendant opposed the motion arguing that Emanuel's motion should be denied
2 because his claims are not ripe, and he has not exhausted his administrative remedies
3 related to the new claims in his motion. (ECF No. 44.) Emanuel's reply restates his initial
4 arguments. (ECF No. 46.)

5 **II. LEGAL STANDARD**

6 The purpose of a preliminary injunction or temporary restraining order is to
7 preserve the status quo if the balance of equities so heavily favors the moving party that
8 justice requires the court to intervene to secure the positions until the merits of the action
9 are ultimately determined. *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).
10 A preliminary injunction is an "extraordinary and drastic remedy" that is "never awarded
11 as of right." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (citations omitted). Instead, in
12 every case, the court "must balance the competing claims of injury and must consider
13 the effect on each party of the granting or withholding of the requested relief." *Winter v.*
14 *Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008) (quotation marks and
15 citation omitted). The instant motion requires the Court determine whether plaintiff has
16 established the following: (1) he is likely to succeed on the merits; (2) he is likely to suffer
17 irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in
18 his favor; and (4) an injunction is in the public interest. *Winter*, 555 U.S. at 20 (citations
19 omitted).

20 Before *Winter*, courts in the Ninth Circuit applied an alternative "sliding-scale" test
21 for issuing a preliminary injunction that allowed the movant to offset the weakness of a
22 showing on one factor with the strength of another. See *Alliance for Wild Rockies v.*
23 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011); see also *Beardslee v. Woodford*, 395 F.3d
24 1064, 1067 (9th Cir. 2005). In *Winter*, the Supreme Court did not directly address the
25 continued validity of the Ninth Circuit's sliding-scale approach to preliminary injunctions.
26 See *Winter*, 555 U.S. at 51; see also *Alliance*, 632 F.3d at 1131. The Ninth Circuit has
27 since found that post-*Winter*, this circuit's sliding-scale approach, or "serious questions"
28 test survives when applied as part of the four-element *Winter*'s test. *Alliance*, 632 F.3d

1 at 1131-32. “In other words, ‘serious questions going to the merits’ and a hardship
 2 balance that tips sharply towards the plaintiff can support issuance of an injunction,
 3 assuming the other two elements of the *Winter* test are also met.” *Id.* (citations omitted).
 4 The portion of the sliding-scale test that allowed injunctive relief upon the possibility, as
 5 opposed to likelihood, of irreparable injury to the plaintiff, was expressly overruled by
 6 *Winter*. See *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009).

7 An even more stringent standard is applied where mandatory, as opposed to
 8 prohibitory preliminary relief is sought. The Ninth Circuit has noted that although the
 9 same general principles inform the court’s analysis, “[w]here a party seeks mandatory
 10 preliminary relief that goes well beyond maintaining the status quo *pendente lite*, courts
 11 should be extremely cautious about issuing a preliminary injunction.” *Martin v.*
 12 *International Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984); see also *Committee*
 13 *of Cent. American Refugees v. Immigration & Naturalization Service*, 795 F.2d 1434,
 14 1442 (9th Cir. 1986). Thus, an award of mandatory preliminary relief is not to be granted
 15 unless both the facts and the law clearly favor the moving party and extreme or serious
 16 damage will result. See *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (quoting
 17 *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1979)).

18 Finally, the Prison Litigation Reform Act (PLRA) mandates that prisoner litigants
 19 must satisfy additional requirements when seeking preliminary injunctive relief against
 20 prison officials:

21 Preliminary injunctive relief must be narrowly drawn, extend no further than
 22 necessary to correct the harm the court finds requires preliminary relief, and
 23 be the least intrusive means necessary to correct that harm. The court shall
 24 give substantial weight to any adverse impact on public safety or the
 25 operation of a criminal justice system caused by the preliminary relief and
 26 shall respect the principles of comity set out in paragraph (1)(B) in tailoring
 27 any preliminary relief.

28 18 U.S.C. §3626(a)(2). Thus, section 3626(a)(2) limits the Court’s power to grant
 29 preliminary injunctive relief to inmates. *Gilmore v. People of the State of California*, 220
 30 F.3d 987, 998 (9th Cir. 2000). “Section 3626(a)(2) . . . operates simultaneously to restrict
 31 the equity jurisdiction of federal courts and to protect the bargaining power of prison

1 administrators-no longer may courts grant or approve relief that binds prison
 2 administrators to do more than the constitutional minimum." *Id.* at 999.

3 Where the motion for preliminary injunction is related to new allegations of
 4 misconduct—distinct from the allegations at issue in the complaint—such a motion must
 5 be denied. See e.g., *Padilla v. Nevada*, No. 2:08-cv-410, 2011 WL 2746653, at 8 (D. Nev.
 6 June 3, 2011) (denying request for preliminary injunction unrelated to claims in the
 7 complaint); *Mitchell v. Haviland*, No. 2:098-cr-3012, 2014 WL 458218, at *2 (E.D. Ca.
 8 February 4, 2014) (denying motion for preliminary injunction where the conduct asserted
 9 in the motions is based on new assertions of misconduct unrelated to the acts of
 10 misconduct asserted in the complaint); *Burton v. Paramo*, No. 3:17-cv-1953-BEN-KSC,
 11 2017 WL 6048805, at *4 (S.D. Ca. Dec. 5, 2017) (denying motion for preliminary injunction
 12 seeking injunction claimed retaliation for bringing underlying lawsuit because those acts
 13 were separate from claims asserted within the complaint itself.)

14 A preliminary injunction is an extraordinary remedy never awarded as of right.
 15 *Winters v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). However, as
 16 a threshold matter, the court lacks authority to issue injunctive relief when there is no
 17 “relationship between the injury claimed in the motion for injunctive relief and the conduct
 18 asserted in the underlying complaint.” *Pac. Radiation Oncology, LLC v. Queen’s Medical
 19 Ctr.*, 810 F.3d 631, 636 (9th Cir. 2015) (citing *Devose v. Herrington*, 42 F.3d 470, 471 (8th
 20 Cir. 1994)). Thus, the moving party must establish there is a sufficient nexus between the
 21 claims raised by the injunctive relief motion and the conduct asserted in the underlying
 22 complaint. *Id.*

23 Where the motion for preliminary injunction is related to new allegations of
 24 misconduct—distinct from the allegations at issue in the complaint—such a motion must
 25 be denied. See e.g., *Padilla v. Nevada*, No. 2:08-cv-410, 2011 WL 2746653, at *8 (D.
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3 2017 WL 6048805, at *4 (S.D. Ca. Dec. 5, 2017) (denying motion for preliminary injunction
4 seeking injunction claimed retaliation for bringing underlying lawsuit because those acts
5 were separate from claims asserted within the complaint itself.)

6 **III. DISCUSSION**

7 In his motion, Emanuel seeks injunctive relief to prevent alleged further abuse from
8 correctional officers and an order for his transfer or release from prison. (ECF No. 42.)
9 Therefore, the Court construes Emanuel's motion as a motion for preliminary injunction.
10 Having reviewed all the filings related to this motion with the above-cited principles in
11 mind, the Court finds that Emanuel's motion should be denied. Although Emanuel briefly
12 restates the facts of this case concerning an alleged use of excessive force on March 29,
13 2020, the primary substance of this motion is related to incidents that occurred after the
14 acts that form the basis of this case. In fact, most of the incidents identified by the motion
15 do not appear to involve Emanuel directly or any of the named defendants in this case.
16 Rather, the alleged new incidents of misconduct appear to relate to actions taken against
17 other inmates housed at ESP perpetrated by correctional officers who are not defendants
18 in this case. Moreover, Emanuel has failed to establish or explain how any of these
19 allegations or complaints have any nexus or relationship to the allegations in the
20 underlying complaint, which is limited to a single incident of excessive force on March 29,
21 2020. Therefore, this motion seeks relief based on new allegations—that are distinct from
22 issues presented in the complaint—and must be denied. See e.g., *Padilla*, 2011 WL
23 2746653, at *8 (denying request for preliminary injunction unrelated to claims in the
24 complaint).

25 **IV. CONCLUSION**

26 For good cause appearing and the reasons stated above, the Court recommends
27 that Emanuel's motion for preliminary injunction, (ECF No. 42), be denied.

28 The parties are advised:

1 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
2 Practice, the parties may file specific written objections to this Report and
3 Recommendation within fourteen days of receipt. These objections should be entitled
4 "Objections to Magistrate Judge's Report and Recommendation" and should be
5 accompanied by points and authorities for consideration by the District Court.

6 2. This Report and Recommendation is not an appealable order and any
7 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
8 District Court's judgment.

9 **V. RECOMMENDATION**

10 **IT IS THEREFORE RECOMMENDED** that Emanuel's motion for preliminary
11 injunction, (ECF No. 42), be **DENIED**.

12 **DATED:** March 31, 2022.

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14 **UNITED STATES MAGISTRATE JUDGE**
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